

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JEFFERSON D. THERRELL**

Claimant

VS.

# FRU-CON CONSTRUCTION CORPORATION

Respondent

AND

**NATIONAL UNION FIRE INSURANCE COMPANY  
OF NEW YORK**

Insurance Carrier

Docket No. 228,224

## ORDER

Claimant appealed the preliminary hearing Order dated May 26, 1998, entered by Administrative Law Judge Jon L. Frobish.

## ISSUES

The Judge denied claimant's request for benefits after finding that claimant had sustained a later injury while working for another employer. The only issue on appeal is whether claimant's present need for shoulder surgery is related to the work-related accident he sustained while working for the respondent on November 18, 1995, or whether he sustained a later injury while working for a different employer.

## FINDINGS OF FACT

After considering the record compiled to date, the Appeals Board finds:

- (1) On November 18, 1995, a heavy pipe fell approximately ten feet and struck claimant's neck and right shoulder. At the time of the accident, claimant was working for the respondent and performing his duties as a pipe fitter.
- (2) The day after the accident, claimant sought treatment at a hospital emergency room. In late November 1995, claimant saw Dr. Kyle M. Tipton for treatment. Claimant

did not attend his follow-up appointment with Dr. Tipton in December 1995 as he was feeling better and he had gone to Mississippi with his wife to visit her ailing mother.

(3) After returning from Mississippi, claimant resumed his regular job duties. Claimant used his right arm and shoulder in performing that work but did not experience any pain or problems with his shoulder. Claimant did not lose any time from work because of the accident.

(4) In approximately March 1996, respondent laid claimant off. Claimant then began working for another employer, Habert-Yeargin, as a lead man, a job that required significant lighter work than his job as a pipe fitter. Claimant does not recall having any problems with his previously injured shoulder while performing that job.

(5) Beginning August 1996, claimant next worked for Veco Construction in Anchorage, Alaska. That job required a lot of lifting and generally was much more physical than his previous job. While performing that work, claimant noticed burning and aching in his right shoulder and had difficulty sleeping on it. After performing that job for approximately six weeks, claimant was laid off.

(6) After working in Alaska, in September 1996 claimant found a pipefitting job with another employer, Elkhorn Construction. That job was easier than the work claimant performed in Alaska as it did not require as much lifting.

(7) After working for Elkhorn, claimant was out of work for several months until February 1997 when he started working for Mid-American Building Supply as an assistant warehouse manager loading and unloading trucks. Claimant experienced significant problems with his right shoulder when he handled heavy doors that weighed 50 to 100 pounds. He performed that job for about one month.

(8) Claimant then worked for two weeks for Professional Mechanical Contractors until he was laid off. He then returned to Elkhorn and also returned to Alaska.

(9) Although Dr. Robert L. Eyster had treated and released claimant from treatment in January 1997, claimant returned to the doctor in September 1997. At that time Dr. Eyster recommended a surgical decompression of the right shoulder.

(10) Since 1997 claimant has worked for Elkhorn Construction, Blackburn Construction, Western Environmental, and Alert Corporation, among others, as a pipe fitter.

(11) Claimant's work activities at Mid-American significantly worsened his shoulder pain and caused the pain to be constant in nature. Claimant testified that handling the heavy doors made his pain intolerable. He also testified he believes his present condition is similar to that when he left Mid-American. According to claimant, his condition is now much worse than it was before he began working for Mid-American.

(12) In the records admitted at the preliminary hearing, Dr. Eyster indicates he believes claimant's present need for medical treatment to the shoulder is a result of the work claimant performed at Mid-American rather than the accident that claimant sustained while working for the respondent.

**CONCLUSIONS OF LAW**

The preliminary hearing Order should be affirmed.

The Appeals Board agrees with Judge Frobish's analysis. The Appeals Board finds that it is more probably true than not that claimant sustained additional injury while working for Mid-American Building Supply and that injury and aggravation has caused claimant's present need for medical treatment.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated May 26, 1998, entered by Administrative Law Judge Jon L. Frobish should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

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BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Kim R. Martens, Wichita, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director